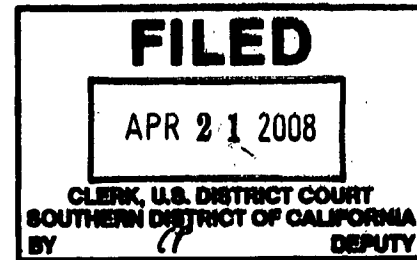


Robert Lee Quackenbush
 PLAINTIFF/PETITIONER/MOVANT'S NAME

PRISON NUMBER _____

1
 PLACE OF CONFINEMENT

PO Box 80935
 ADDRESS



**United States District Court
 Southern District Of California**

PEOPLE OF THE STATE OF CALIFORNIA,
 Plaintiff/Petitioner/Movant

v.

ROBERT LEE QUACKENBUSH,
 Defendant/Respondent

Civil No. 08CV567 JAH LSP
 (TO BE FILLED IN BY U.S. DISTRICT COURT CLERK)
 HC 18020
 Sup Ct. 175743
**MOTION AND DECLARATION UNDER
 PENALTY OF PERJURY IN SUPPORT
 OF MOTION TO PROCEED IN FORMA
PAUPERIS**

I, Robert Lee Quackenbush
 declare that I am the Plaintiff/Petitioner/Movant in this case. In support of my request to proceed without prepayment of fees or security under 28 U.S.C. § 1915, I further declare I am unable to pay the fees of this proceeding or give security because of my poverty, and that I believe I am entitled to redress.

In further support of this application, I answer the following question under penalty of perjury:

1. Are you currently incarcerated? ☐ Yes ☒ No (If "No" go to question 2)

If "Yes," state the place of your incarceration N/A

Are you employed at the institution? ☐ Yes ☐ No

Do you receive any payment from the institution? ☐ Yes ☐ No

[Have the institution fill out the Certificate portion of this affidavit and attach a certified copy of the trust account statement from the institution of your incarceration showing at least the last six months transactions.]

2. Are you currently employed? ☐ Yes ☒ No

a. If the answer is "Yes," state the amount of your take-home salary or wages and pay period and give the name and address of your employer. N/A

b. If the answer is "No" state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer. July 03, 2003 - disabled and on General Relief and Food Stamps

3. In the past twelve months have you received any money from any of the following sources?:

- | | |
|---|---|
| a. Business, profession or other self-employment | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| b. Rent payments, royalties interest or dividends | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| c. Pensions, annuities or life insurance | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| d. Disability or workers compensation | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| e. Social Security, disability or other welfare | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| e. Gifts or inheritances | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| f. Spousal or child support | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| g. Any other sources | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

If the answer to any of the above is "Yes" describe each source and state the amount received and what you expect you will continue to receive each month. General Relief and Food Stamps

4. Do you have any checking account(s)? ☒ Yes ☐ No

a. Name(s) and address(es) of bank(s): U.S. Bank

b. Present balance in account(s): \$7.55

5. Do you have any savings/IRA/money market/CDS' separate from checking accounts? ☐ Yes ☒ No

a. Name(s) and address(es) of bank(s):

b. Present balance in account(s):

6. Do you own an automobile or other motor vehicle? ☒ Yes ☐ No

a. Make: Dodge Year: 1997 Model: Stratus

b. Is it financed? ☐ Yes ☒ No

c. If so, what is the amount owed? N/A

7. Do you own any real estate, stocks, bonds, securities, other financial instruments, or other valuable property?

☐ Yes ☒ No

If "Yes" describe the property and state its value.

W/A

8. List the persons who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support.

N/A

9. List any other debts (current obligations, indicating amounts owed and to whom they are payable):

Credits cards, financial institutions, City of San Diego, collection agencies, etc.

10. List any other assets or items of value (specify real estate, gifts, trusts inheritances, government bonds, stocks, savings certificates, notes, jewelry, artwork, or any other assets [include any items of value held in someone else's name]):

N/A

12. If you answered all of the items in #3 "No," and have not indicated any other assets or sources of income anywhere on this form, you must explain the sources of funds for your day-to-day expenses.

N/A

N/A

I declare under penalty of perjury that the above information is true and correct and understand that a false statement herein may result in the dismissal of my claims.

April 05, 2008

DATE



SIGNATURE OF APPLICANT

— THIS FORM MUST BE KEPT CONFIDENTIAL —

FW-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Robert Quackenbush PO Box 80935 San Diego, CA 92138-0935 TELEPHONE NO.: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):		FOR COURT USE ONLY CASE NUMBER:
NAME OF COURT: UNITED STATES DISTRICT COURT STREET ADDRESS: MAILING ADDRESS: 880 Front Street CITY AND ZIP CODE: San Diego, CA 92101-8900 BRANCH NAME: Southern District		
PLAINTIFF/ PETITIONER: DEFENDANT/ RESPONDENT: In re ROBERT LEE QUACKENBUSH		
APPLICATION FOR WAIVER OF COURT FEES AND COSTS		

I request a court order so that I do not have to pay court fees and costs.

- ☒ I am **not** able to pay any of the court fees and costs.
 - ☐ I am able to pay **only** the following court fees and costs (specify):
- My current street or mailing address is (if applicable, include city or town, apartment no., if any, and zip code): Same as above
- My occupation, employer, and employer's address are (specify): Disabled/Unemployed
 - My spouse's occupation, employer, and employer's address are (specify): N/A
- ☒ I am receiving financial assistance under one or more of the following programs:
 - ☐ SSI and SSP: Supplemental Security Income and State Supplemental Payments Programs
 - ☐ CalWORKs: California Work Opportunity and Responsibility to Kids Act, implementing TANF, Temporary Assistance for Needy Families (formerly AFDC)
 - ☒ Food Stamps: The Food Stamp Program
 - ☐ County Relief, General Relief (G.R.), or General Assistance (G.A.)
- If you checked box 4, you must check and complete one of the three boxes below, unless you are a defendant in an unlawful detainer action. Do not check more than one box.
 - ☐ (Optional) My Medi-Cal number is (specify):
 - ☒ (Optional) My social security number is (specify):
 094 - 58 - 4793 and my date of birth is (specify):
[Federal law does not require that you give your social security number. However, if you don't give your social security number, you must check box c and attach documents to verify the benefits checked in item 4.]
 - ☐ I am attaching documents to verify receipt of the benefits checked in item 4, if requested by the court.
[See Form FW-001-INFO, Information Sheet on Waiver of Court Fees and Costs, available from the clerk's office, for a list of acceptable documents.]

[If you checked box 4 above, skip items 6 and 7, and sign at the bottom of this side.]

- ☐ My total gross monthly household income is less than the amount shown on the Information Sheet on Waiver of Court Fees and Costs available from the clerk's office.

[If you checked box 6 above, skip item 7, complete items 8, 9a, 9d, 9f, and 9g on the back of this form, and sign at the bottom of this side.]

- ☒ My income is not enough to pay for the common necessities of life for me and the people in my family whom I support and also pay court fees and costs. **[If you check this box, you must complete the back of this form.]**

WARNING: You must immediately tell the court if you become able to pay court fees or costs during this action. You may be ordered to appear in court and answer questions about your ability to pay court fees or costs.

I declare under penalty of perjury under the laws of the State of California that the information on both sides of this form and all attachments are true and correct.

Date: April 11, 2008

Robert Lee Quackenbush

(TYPE OR PRINT NAME)

(Financial information on reverse)

(SIGNATURE)

FW-001

PLAINTIFF/PETITIONER: <u>In re ROBERT LEE QUACKENBUSH</u> DEFENDANT/RESPONDENT:	CASE NUMBER:
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FINANCIAL INFORMATION

8. ☐ My pay changes considerably from month to month. **[If you check this box, each of the amounts reported in item 9 should be your average for the past 12 months.]**
9. **MY MONTHLY INCOME**
- a. My gross monthly pay is: \$ _____
- b. **My payroll deductions are (specify purpose and amount):**
- (1) \$ _____
- (2) \$ _____
- (3) \$ _____
- (4) \$ _____
- My TOTAL payroll deduction amount is: \$ _____
- c. My monthly take-home pay is
(a. minus b.): \$ _____
- d. Other money I get each month is (specify source and amount; include spousal support, child support, parental support, support from outside the home, scholarships, retirement or pensions, social security, disability, unemployment, military basic allowance for quarters (BAQ), veterans payments, dividends, interest or royalty, trust income, annuities, net business income, net rental income, reimbursement of job-related expenses, and net gambling or lottery winnings):
- (1) \$ _____
- (2) \$ _____
- (3) \$ _____
- (4) \$ _____
- The TOTAL amount of other money is: \$ _____
(If more space is needed, attach page labeled Attachment 9d.)
- e. **MY TOTAL MONTHLY INCOME IS**
(c. plus d.): \$ _____
- f. Number of persons living in my home: _____
Below list all the persons living in your home, including your spouse, who depend in whole or in part on you for support, or on whom you depend in whole or in part for support:
- | Name | Age | Relationship | Gross Monthly Income |
|-----------|-----|--------------|----------------------|
| (1) | | | \$ |
| (2) | | | \$ |
| (3) | | | \$ |
| (4) | | | \$ |
| (5) | | | \$ |
- The TOTAL amount of other money is: \$ _____
(If more space is needed, attach page labeled Attachment 9f.)
- g. **MY TOTAL GROSS MONTHLY HOUSEHOLD INCOME IS**
(a. plus d. plus f): \$ _____
10. I own or have an interest in the following property:
- a. Cash \$ _____
- b. Checking, savings, and credit union accounts (list banks):
- (1) \$ _____
- (2) \$ _____
- (3) \$ _____
- (4) \$ _____
10. c. Cars, other vehicles, and boats (list make, year, fair market value (FMV), and loan balance of each):
- | Property | FMV | Loan Balance |
|-----------|----------|--------------|
| (1) | \$ | \$ |
| (2) | \$ | \$ |
| (3) | \$ | \$ |
- d. Real estate (list address, estimated fair market value (FMV), and loan balance of each property):
- | Property | FMV | Loan Balance |
|-----------|----------|--------------|
| (1) | \$ | \$ |
| (2) | \$ | \$ |
| (3) | \$ | \$ |
- e. Other personal property — jewelry, furniture, furs, stocks, bonds, etc. (list separately):
..... \$ _____
11. **My monthly expenses not already listed in item 9b above are the following:**
- a. Rent or house payment & maintenance \$ _____
- b. Food and household supplies \$ _____
- c. Utilities and telephone \$ _____
- d. Clothing \$ _____
- e. Laundry and cleaning \$ _____
- f. Medical and dental payments \$ _____
- g. Insurance (life, health, accident, etc.) \$ _____
- h. School, child care \$ _____
- i. Child, spousal support (prior marriage) \$ _____
- j. Transportation and auto expenses (insurance, gas, repair) \$ _____
- k. Installment payments (specify purpose and amount):
- (1) \$ _____
- (2) \$ _____
- (3) \$ _____
- The TOTAL amount of monthly installment payments is: \$ _____
- l. Amounts deducted due to wage assignments and earnings withholding orders: \$ _____
- m. Other expenses (specify):
- (1) \$ _____
- (2) \$ _____
- (3) \$ _____
- (4) \$ _____
- (5) \$ _____
- The TOTAL amount of other monthly expenses is: \$ _____
- n. **MY TOTAL MONTHLY EXPENSES ARE**
(add a. through m.): \$ _____
12. Other facts that support this application are (describe unusual medical needs, expenses for recent family emergencies, or other unusual circumstances or expenses to help the court understand your budget; if more space is needed, attach page labeled Attachment 12):

WARNING: You must immediately tell the court if you become able to pay court fees or costs during this action. You may be ordered to appear in court and answer questions about your ability to pay court fees or costs.

FW-003

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): <div style="text-align: center; font-family: cursive;">Robert Quackenbush</div> <div style="text-align: center;">PO Box 80935</div> <div style="text-align: center;">San Diego, CA 92138</div> TELEPHONE NO.: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):	FOR COURT USE ONLY
STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FAX NO.:
UNITED STATES DISTRICT COURT 880 Front Street San Diego, CA 92101-8900 Southern District Court	N/A
PLAINTIFF/ PETITIONER: DEFENDANT/ RESPONDENT:	CASE NUMBER:
ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS	

1. The application was filed on (date): ☐ A previous order was issued on (date):
2. The application was filed by (name):
3. ☐ IT IS ORDERED that the application is **granted** ☐ in whole ☐ in part (complete item 4 below).
 - a. ☐ **No payments.** Payment of all the fees and costs listed in California Rules of Court, rule 3.61, is **waived**.
 - b. ☐ **The applicant shall pay** all the fees and costs listed in California Rules of Court, rule 3.61, EXCEPT the following:

(1) <input type="checkbox"/> Filing papers.	(6) <input type="checkbox"/> Sheriff and marshal fees.
(2) <input type="checkbox"/> Certification and copying.	(7) <input type="checkbox"/> Reporter's fees* (valid for 60 days).
(3) <input type="checkbox"/> Issuing process and certification.	(8) <input type="checkbox"/> Telephone appearance (Gov. Code, § 68070.1 (c)).
(4) <input type="checkbox"/> Transmittal of papers.	(9) <input type="checkbox"/> Other (specify code section):
(5) <input type="checkbox"/> Court-appointed interpreter.	

Reporter's fees are per diem pursuant to Code Civ. Proc., §§ 269, 274c, and Gov. Code, §§ 69947, 69948, and 72195.
 - c. **Method of payment.** The applicant shall pay all the fees and costs when charged, EXCEPT as follows:
 (1) ☐ Pay (specify): _____ percent. (2) ☐ Pay: \$ _____ per month or more until the balance is paid.
 - d. The clerk of the court, county financial officer, or appropriate county officer is authorized to require the applicant to appear before and be examined by the court no sooner than four months from the date of this order, and not more than once in any four-month period. ☐ The applicant is ordered to appear in this court as follows for review of his or her financial status:

Date:	Time:	Dept.:	Div.:	Room:
-------	-------	--------	-------	-------
 - e. ☐ The clerk is directed to mail a copy of this order only to the applicant's attorney or to the applicant if not represented.
 - f. **All unpaid fees and costs shall be deemed to be taxable costs if the applicant is entitled to costs and shall be a lien on any judgment recovered by the applicant and shall be paid directly to the clerk by the judgment debtor upon such recovery.**
4. ☐ IT IS ORDERED that the application is **denied** ☐ in whole ☐ in part for the following reasons (see Cal. Rules of Court, rules 3.50–3.63):
 - a. ☐ Monthly household income exceeds guidelines (Gov. Code, § 68511.3(a)(6)(B); form FW-001-INFO).
 - b. ☐ Other (Complete line 4b on page 2).
 - c. The applicant shall pay any fees and costs due in this action within 10 days from the date of service of this order or any paper filed by the applicant with the clerk will be of no effect.
 - d. The clerk is directed to mail a copy of this order to all parties who have appeared in this action.
5. ☐ IT IS ORDERED that a **hearing** be held.
 - a. The substantial evidentiary conflict to be resolved by the hearing is (specify):
 - b. The applicant should appear in this court at the following hearing to help resolve the conflict:

Date:	Time:	Dept.:	Div.:	Room:
-------	-------	--------	-------	-------
 - c. The address of the court is (specify):
☐ Same as above
 - d. The clerk is directed to mail a copy of this order only to the applicant's attorney or to the applicant if not represented.

NOTICE: If item 3d or item 5b is filled in and the applicant does not attend the hearing, the court may revoke or change the order or deny the application without considering information the applicant wants the court to consider.

WARNING: The applicant must immediately tell the court if he or she becomes able to pay court fees or costs during this action. The applicant may be ordered to appear in court and answer questions about his or her ability to pay fees or costs.

Date:

☐☐

Clerk, by _____, Deputy

JUDICIAL OFFICER

(Clerk may GRANT in full a nondiscretionary fee waiver; see Cal. Rule of Court, rules 3.56.)

Page 1 of 2

FW-003

PLAINTIFF/PETITIONER (Name):	CASE NUMBER:
DEFENDANT/RESPONDENT (Name): <i>In re ROBERT LEE QUACKENBUSH</i>	

4b ☐ Application is denied in whole or in part (specify reasons):

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that a true copy of the foregoing was mailed first class, postage prepaid, in a sealed envelope addressed as shown below, and that the mailing of the foregoing and execution of this certificate occurred at
 (place): _____, California,
 on (date): _____

Clerk, by _____, Deputy

(SEAL)

CLERK'S CERTIFICATE

I certify that the foregoing is a true and correct copy of the original on file in my office.

Date:

Clerk, by _____, Deputy

1
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7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 ROBERT LEE QUACKENBUSH,

12 Petitioner,

13 v.

14 UNKNOWN, Warden,

15 Respondent.

Civil No. 08cv0567-JAH (LSP)

**ORDER DISMISSING CASE
WITHOUT PREJUDICE**

16 Petitioner, a state parolee proceeding pro se, has filed a Petition for a Writ of Habeas
17 Corpus pursuant to 28 U.S.C. § 2254, but has failed to pay the \$5.00 filing fee and has failed to
18 move to proceed in forma pauperis. In addition, Petitioner has failed to use a court-approved
19 form, has failed to name a proper respondent, and has failed to allege exhaustion of state court
20 remedies.

21 Because this Court cannot proceed until Petitioner has either paid the \$5.00 filing fee or
22 qualified to proceed in forma pauperis, the Court **DISMISSES** the case without prejudice. See
23 Rule 3(a), 28 U.S.C. foll. § 2254. If Petitioner wishes to proceed with this case, he must submit,
24 **no later than May 27, 2008**, a copy of this Order with the \$5.00 fee or with adequate proof of
25 his inability to pay the fee along with an amended petition which cures the following defects.

26 A Petition for a Writ of Habeas Corpus must be submitted in accordance with the Local
27 Rules of the United States District Court for the Southern District of California. See Rule 2(d),
28 28 U.S.C. foll. § 2254. In order to comply with the Local Rules, the petition must be submitted

1 upon a court-approved form and in accordance with the instructions approved by the Court. Id.;
2 S. D. CAL. CIVLR HC.2(b). Presently, Petitioner has not submitted the application a for writ of
3 habeas corpus on a court-approved form. The Court will send Petitioner a blank Southern
4 District of California habeas petition form along with a copy of this Order.

5 Further, Petitioner has not named a proper Respondent. On federal habeas, a state
6 prisoner must name the state officer having custody of him as the respondent. Ortiz-Sandoval
7 v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996) (citing Rule 2(a), 28 U.S.C. foll. § 2254).
8 “Typically, that person is the warden of the facility in which the petitioner is incarcerated.” Id.
9 However, if a “petitioner is on probation or parole, he may name his probation or parole officer
10 ‘and the official in charge of the parole or probation agency, or the state correctional agency, as
11 appropriate.’” Id. (quoting Rule 2, 28 U.S.C. foll. § 2254 advisory committee’s note). In some
12 cases, a petitioner may name the state attorney general. Id. Federal courts lack personal
13 jurisdiction when a habeas petition fails to name a proper respondent. See id. If Petitioner
14 wishes to proceed with this action, he must name a proper Respondent.

15 Finally, habeas petitioners who wish to challenge either their state court conviction or the
16 length of their confinement in state prison, must first exhaust state judicial remedies. 28 U.S.C.
17 § 2254(b), (c); Granberry v. Greer, 481 U.S. 129, 133-34 (1987). To exhaust state judicial
18 remedies, a California state prisoner must present the California Supreme Court with a fair
19 opportunity to rule on the merits of every issue raised in his or her federal habeas petition. 28
20 U.S.C. § 2254(b), (c); Granberry, 481 U.S. at 133-34. Moreover, to properly exhaust state court
21 remedies a petitioner must allege, in state court, how one or more of his or her federal rights
22 have been violated. The Supreme Court in Duncan v. Henry, 513 U.S. 364 (1995) reasoned:
23 “If state courts are to be given the opportunity to correct alleged violations of prisoners’ federal
24 rights, they must surely be alerted to the fact that the prisoners are asserting claims under the
25 United States Constitution.” Id. at 365-66 (emphasis added). For example, “[i]f a habeas
26 petitioner wishes to claim that an evidentiary ruling at a state court trial denied him [or her] the
27 due process of law guaranteed by the Fourteenth Amendment, he [or she] must say so, not only
28 in federal court, but in state court.” Id. at 366 (emphasis added).

1 Here, Petitioner has not indicated that he has exhausted state judicial remedies. Although
2 Petitioner attaches a copy of an order of the state appellate court denying a habeas petition filed
3 in that court, nowhere in the Petition does Petitioner allege that he raised his claims in the
4 California Supreme Court. If Petitioner has raised his claims in the California Supreme Court
5 he must so specify. The burden of pleading that a claim has been exhausted lies with the
6 petitioner. Cartwright v. Cupp, 650 F.2d 1103, 1104 (9th Cir. 1981).

7 The Court cautions Petitioner that under the Antiterrorism and Effective Death Penalty
8 Act of 1996 (AEDPA) a one-year period of limitation shall apply to a petition for a writ of
9 habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation
10 period shall run from the latest of:

11 (A) the date on which the judgment became final by the
12 conclusion of direct review or the expiration of the time for seeking
such review;

13 (B) the date on which the impediment to filing an application
14 created by State action in violation of the Constitution or laws of the
United States is removed, if the applicant was prevented from filing
by such State action;

15 (C) the date on which the constitutional right asserted was
16 initially recognized by the Supreme Court, if the right has been
newly recognized by the Supreme Court and made retroactively
17 applicable to cases on collateral review; or

18 (D) the date on which the factual predicate of the claim or
19 claims presented could have been discovered through the exercise
of due diligence.

20 28 U.S.C.A. § 2244(d)(1)(A)-(D) (West 2006).

21 The statute of limitations does not run while a properly filed state habeas corpus petition
22 is pending. 28 U.S.C. § 2244(d)(2); see Nino v. Galaza, 183 F.3d 1003, 1006 (9th Cir. 1999),
23 cert. denied, 529 U.S. 1104 (2000). But see Artuz v. Bennett, 531 U.S. 4, 8 (2000) (holding that
24 “an application is ‘properly filed’ when its delivery and acceptance [by the appropriate court
25 officer for placement into the record] are in compliance with the applicable laws and rules
26 governing filings.”); Bonner v. Carey, 425 F.3d 1145, 1149 (9th Cir.) (holding that a state
27 application for post-conviction relief which is ultimately dismissed as untimely was neither
28 “properly filed” nor “pending” while it was under consideration by the state court, and therefore

1 does not toll the statute of limitations), as amended 439 F.3d 993, cert. denied, 127 S.Ct (2006).
2 However, absent some other basis for tolling, the statute of limitations continues to run while
3 a federal habeas petition is pending. Duncan v. Walker, 533 U.S. 167, 181-82 (2001).

4 Rule 4 of the Rules Governing Section 2254 Cases provides for summary dismissal of a
5 habeas petition “[i]f it plainly appears from the face of the petition and any attached exhibits that
6 the petitioner is not entitled to relief in the district court . . .” Rule 4, 28 U.S.C. foll. § 2254.
7 Here, it appears plain from the Petition that Petitioner is not presently entitled to federal habeas
8 relief because he has not satisfied the filing fee requirement, has not used a court-approved form,
9 has not named a proper Respondent, and has not alleged exhaustion of state court remedies.

10 **CONCLUSION AND ORDER**

11 The Petition for a Writ of Habeas Corpus is **DISMISSED** without prejudice for failing
12 to satisfy the filing fee requirement, failing to use a court-approved form, failing to name a
13 proper Respondent and failing to allege exhaustion of state court remedies. If Petitioner wishes
14 to proceed with this case, he must submit, **no later than May 27, 2008**, a copy of this Order
15 with the \$5.00 fee or with adequate proof of his inability to pay the fee and file a First Amended
16 Petition which cures the pleading defects identified in this Order. Petitioner is cautioned that
17 if he fails to allege exhaustion of his state court remedies by **May 27, 2008**, he will have to start
18 over by filing a new petition which will be given a new civil case number. The Clerk of Court
19 shall send a blank Southern District of California In Forma Pauperis Application and a blank
20 Southern District of California amended petition form to Petitioner along with a copy of this
21 Order.

22 **IT IS SO ORDERED.**

23 DATED: April 2, 2008

24 

25 JOHN A. HOUSTON
26 United States District Judge
27
28